LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 13 [illegible]
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963.

No. 307.

MABEL V. ROMAN, Clerk of the Peace for New Castle County; WALTER A. HANDSBERRY, Clerk of the Peace for Kent County; I. ROBERT WILLEY, Clerk of the Peace for Sussex County; et als.,

Appellants,

v.

RICHARD SINCOCK, et als.

Appeal From the United States District Court for the District of Delaware.

STATEMENT OF APPELLEES WITH RESPECT TO APPELLANTS' MOTION TO ADVANCE.

VINCENT A. THEISEN,
1118 Wilmington Trust Building,
Wilmington, Delaware,
Attorney for Appellees.

September 25, 1963.

International, 711 So. 50th St., Phila. 43, Pa.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1963.

No. 307.

MABEL V. ROMAN, CLERK OF THE PEACE FOR NEW CASTLE COUNTY; WALTER A. HANDSBERRY, CLERK OF THE PEACE FOR KENT COUNTY; I. ROBERT WILLEY, CLERK OF THE PEACE FOR SUSSEX COUNTY; ET ALS.,
Appellants,

v.

RICHARD SINCOCK, ET ALS.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE.

STATEMENT OF APPELLEES WITH RESPECT TO APPELLANTS' MOTION TO ADVANCE.

This statement is submitted in response to the Appellants' Motion to Advance made under Rule 43(a).

The Appellees have filed, heretofore a Motion to Affirm the decision of the Court below. That motion is now pending.

We respectfully submit that there is nothing sweeping or unique in the Delaware case and no impelling reason exists for giving it the extraordinary consideration suggested by the Appellants.

The Court below had before it two apportionment schemes. Neither Article II, Section 2, nor the Amendment of 1963, met the minimum standards set by the vast majority of Courts which have considered such action. (See Appellees' Brief in Support of Motion to Affirm, pp. 2, 16-17.) The District Court did not have before it an apportionment scheme where one house was based on population. It therefore made no ruling that, where one house is based upon population, area apportionment of the upper house of a state legislature violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. That issue—notwithstanding the appellants' struggle to interject the same into the case on appeal—was not decided by the Court below.

The Court's holding appears at A41-42 as follows:

> "Putting the matter plainly the apportionment of Section 2 of Article II, new or old, is capricious, arbitrary, and invidiously discriminatory when viewed in the year 1963. In apportioning the House of Representatives the basis must be one of population. 'One vote, One person' must be the aim. Gray v. Sanders, — U. S. — (1963)."

The concurring opinion of Judge Wright (A62) states agreement with Judges Biggs and Layton insofar as Article II Section 2, new or old, are held invidiously discriminatory because of gross population disparities. Insofar as the Senate is concerned, Judge Wright expressed agreement with Judge Biggs' *precatory observations.* The opinion of Judge Layton, of course, expressly limits his holding. Thus, the contention of appellants that the opinions have been misread is in error (Appellants' Brief, p. 4).

The appellants therefore urge that this motion to affirm be granted.

If this Court were not to affirm the decision below and were to enter an order noting probable jurisdiction, the

appellees will of course comply with any schedule that this Court believes would be of help in resolving any issues that might remain after argument in *W. M. C. A. Inc. v. Simon*, No. 20; *Reynolds v. Sims*, No. 23; *Vann v. Frink*, No. 27; *Maryland Committee &c. v. Tawes*, No. 29; *McConnell v. Frink*, No. 41; and *Davis v. Mann*, No. 69.

The appellees further will stand ready to argue the issues at such time as the Court may prescribe.

CONCLUSION.

The appellees respectfully ask this Court to affirm the decision below. If, however, probable jurisdiction is noted, they will extend themselves in any way this Court suggests so that they may have a speedy restoration of the rights guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Respectfully submitted,

VINCENT A. THEISEN,
1118 Wilmington Trust Building,
Wilmington, Delaware,
Attorney for Appellees.

September 25, 1963.